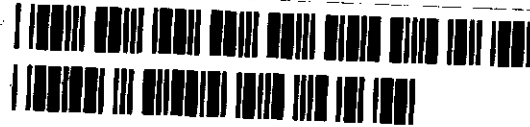


HON. ROBERT S. LASNIK

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WESTERN DISTRICT OF WASHINGTON
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07-CV-00469-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

OBERTO SAUSAGE CO.,

Defendant.

No. C07-469RSL

CONSENT DECREE

WHEREAS, Plaintiff Puget Soundkeeper Alliance filed a Complaint against Defendant Oberto Sausage Co. on March 29, 2007, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facility located in Kent, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel for the parties to this action have engaged in discussions relating to

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Seattle, Washington 98112
(206) 860-2883

1 the potential settlement of this litigation, which discussions have included an assessment of the
2 facts surrounding the alleged violations; and

3 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure
4 compliance with the Clean Water Act at its facility and to address issues raised in the notices of
5 intent to sue served by Plaintiff; and
6

7 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best
8 interest of the parties and the public, and that entry of this Consent Decree without additional
9 litigation is the most appropriate means of resolving these actions; and
10

11 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or
12 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,
13 consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve
14 the controversy between them.
15

16 NOW THEREFORE, without trial of any issue of fact or law, and without admission by
17 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,
18 and upon consideration of the mutual promises herein contained, it is hereby
19

20 ORDERED, ADJUDGED AND DECREED as follows:

- 21 1. This Court has jurisdiction over the parties and subject matter of this action;
- 22 2. The undersigned representative for each party certifies that he is fully authorized
23 by the party or parties whom he represents to enter into the terms and conditions of this Consent
24 Decree and to legally bind the party or parties and their successors in interest to it.
- 25 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon
26 the successors and assigns of the parties.
27

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1 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its
2 facility located at or about 7060 S. 238th St., Kent, Washington (the "facility").

3 5. This Consent Decree constitutes a full and complete settlement of the claims
4 alleged in the Complaint in this case and all other claims known and unknown existing as of the
5 date of entry of this Consent Decree, that could be asserted under the Clean Water Act, 33
6 U.S.C. §§ 1251-1387, arising from operations of the facility identified in paragraph 4 of this
7 Consent Decree.
8

9 6. This Consent Decree shall not constitute evidence in any proceeding, an
10 admission or adjudication with respect to any allegation of the Complaint, any fact or conclusion
11 of law with respect to any matter alleged in or arising out of the Complaint, or the admissions or
12 evidence of any wrongdoing or misconduct on the part of the Defendant or its successor.
13

14 7. In full and complete satisfaction of the claims covered by the Complaint filed in
15 this case and all other claims covered by this Consent Decree, as described in Paragraph 5,
16 Defendant agrees to abide by and be subject to the following terms and conditions:
17

18 a. Defendant shall comply fully with all conditions of its National Pollutant
19 Discharge Elimination System Permit No. SO3000803C and any successor, modified, or
20 replacement permit (collectively, the "NPDES permit");
21

22 b. Defendant shall retain a professional environmental consulting firm to
23 assist with the preparation of a stormwater pollution prevention plan ("SWPPP") that fully
24 satisfies all conditions of the NPDES permit, including addressing the issues raised in the
25 supplemental notice of intent to sue dated May 9, 2007, that Plaintiff served on Defendant, as
26 well as dripping from ice-covered equipment located at the back of the facility. Defendant shall
27

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1 provide a draft of this SWPPP to Plaintiff not later than thirty days after entry of this Decree and
2 shall consider in good faith any comments or suggestions that Plaintiff may provide on the draft
3 SWPPP before finalization of the SWPPP, and shall either amend the draft SWPPP to
4 incorporate Plaintiff's comments or suggestions or respond in writing to these;

5
6 c. Regardless of the frequency of monitoring required by the NPDES permit,
7 for a period of one year from entry of this Decree, Defendant shall collect stormwater samples on
8 a monthly basis from the location it has identified as representative of stormwater discharges and
9 cause such samples to be analyzed for the pollutant parameters required by the NPDES permit
10 for its stormwater samples. Results of this analysis shall be reported to the Department of
11 Ecology as required by the NPDES permit. Defendant need not collect samples during months
12 when there is insufficient precipitation to generate stormwater discharge;

13
14 d. Within six months of entry of this Decree, Defendant shall twice collect
15 samples from each of the two discharge points present at the facility that Defendant has not
16 identified as representative. Defendant shall cause samples from these four sampling events to
17 be analyzed for the pollutant parameters required by the NPDES permit for its stormwater
18 samples. Results of this analysis shall be reported to the Department of Ecology as required by
19 the NPDES permit.
20

21
22 e. Defendant shall, for a period of three years beginning on the date that this
23 Consent Decree is entered by the Court, forward copies to Plaintiff of all written or electronic
24 communications between Defendant and the Washington Department of Ecology concerning
25 Defendant's compliance with the NPDES permit and the Clean Water Act, including but not
26 limited to Discharge Monitoring Reports, Level One, Two, or Three response reports,
27

1 correspondence, and inspection reports. These copies shall be forwarded to Plaintiff on a
2 quarterly basis and not later than the twentieth day following the end of each calendar quarter;

3 8. Not later than thirty days after the date of entry of this Decree, Defendant shall
4 make a payment in the amount of \$22,000 (TWENTY -TWO THOUSAND DOLLARS) to the
5 Northwest Marine Trade Association for the Stormwater Treatment Technology Pilot Study
6 Project that is described in Attachment A to this Decree. Such payment shall be made by check
7 payable and mailed to Northwest Marine Trade Association, with a copy mailed simultaneously
8 to Plaintiff.
9

10 9. Not later than thirty days after the date of entry of this Decree, Defendant shall
11 make a payment in the amount of \$22,000 (TWENTY-TWO THOUSAND DOLLARS) to the
12 Mid Sound Fisheries Enhancement Group for the Riparian Enhancement in the Green River
13 Watershed Project that is described in Attachment B to this Decree. Such payment shall be made
14 by check payable and mailed to Mid Sound Fisheries Enhancement Group, with a copy mailed
15 simultaneously to Plaintiff.
16

17 10. Within 30 days of the entry of this Consent Decree, Defendant shall pay
18 Plaintiff's reasonable attorney and expert fees and costs in the amount of \$17,715.83
19 (SEVENTEEN THOUSAND, SEVEN HUNDRED AND FIFTEEN DOLLARS, AND
20 EIGHTY-THREE CENTS) by check payable and mailed to Smith & Lowney, PLLC, 2317 East
21 John St., Seattle, WA 98112, attn: Richard A. Smith, in full and complete satisfaction of any
22 claims Plaintiff may have under the Clean Water Act for fees and costs.
23

24 11. The Court shall retain jurisdiction over this matter and allow this case to be
25 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
26

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1 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any
2 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent
3 Decree per paragraph 12. In the event of a dispute regarding implementation of, or compliance
4 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through
5 meetings between the parties by serving written notice of request for resolution to the parties and
6 their counsel of record. If no resolution is reached within thirty (30) days from the date that the
7 notice of dispute is served, the parties may resolve the dispute by filing motions with the court.
8

9 12. The parties recognize that no consent judgment can be entered in a Clean Water
10 Act suit in which the United States is not a party prior to 45 days following the receipt of a copy
11 of the proposed consent judgment by the U.S. Attorney General and the Administrator of the
12 U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3). Therefore, upon the signing of this Consent
13 Decree by the parties, Plaintiff shall serve copies of it upon the Administration of the U.S. EPA
14 and the Attorney General.
15
16

17 13. This Consent Decree shall take effect on the date it is entered by the Court. This
18 Consent Decree shall terminate sixty (60) days following completion of all obligations under it.
19

20 14. This Consent Decree may be modified only upon the written consent of the
21 parties and the approval of the Court.

22 15. If for any reason the Court should decline to approve this Consent Decree in the
23 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the
24 sole discretion of either party. The parties agree to continue negotiations in good faith in an
25 attempt to cure any objection raised by the Court to entry of this Consent Decree.
26

27 16. Notifications or copies required by this Consent Decree to be made to Plaintiff

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1 shall be mailed to Puget Soundkeeper Alliance, 5309 Shilshole Ave., #215, Seattle, WA 98107.

2 Notifications required by this Decree to be made to Defendant shall be mailed to Oberto Sausage
3 Company, P.O. Box 429, Kent, WA 98035-0429, with a copy to Eric Merrifield, Perkins Coie
4 LLP, 1201 Third Avenue, Seattle, WA 98001.

5
6 17. Within ten days of entry of this Decree, Plaintiff shall dismiss with prejudice W.
7 D. Washington No. 07-479JLR, Puget Soundkeeper Alliance v. Oberto Sausage Co., which
8 concerns Defendant's Airport Way facility that is no longer in operation and has no current
9 NPDES permit coverage.

10 Dated and entered this 4th day of January, ~~2007~~ ²⁰⁰⁸
11 RL

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13 RLS

14 ROBERT S. LASNIK
15 UNITED STATES DISTRICT JUDGE
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28 CONSENT DECREE - 7
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1 PUGET SOUNDKEEPER ALLIANCE

2 Signature: 

3 Title: Executive Director

4 Dated: 10/31/07

5 OBERTO SAUSAGE CO.

6 Signature: 

7 Title: President CEO

8 Dated: 10-18-07

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28 CONSENT DECREE - 8
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ATTACHMENT A

Project Title: Stormwater Treatment Technology Pilot Study

Applicant Organization: Northwest Marine Trade Association

Mission Statement: The purpose of the Northwest Marine Trade Association is to promote the growth of recreational boating and the boating related businesses of its members.

Contact/Title: Michael Campbell, Executive Director

Mailing address: 1900 N Northlake Way, #233
Seattle, WA 98103-9087

Phone number: 206-634-0911

Email address: michael@nmta.net

Website address: www.nmta.net

Amount requested: \$22,000

Project summary:

The challenge:

A significant portion of stormwater sampling data, collected by a wide range of businesses under the Industrial and Boatyard General Stormwater Permits, are documenting the presence of zinc, copper and lead in stormwater runoff. The level of metals in this stormwater exceed Department of Ecology (Ecology) set benchmarks for these parameters. Since there is some indication that best management practices may not be sufficient to reduce metals to levels considered protective of water quality by Ecology, many businesses may be required to invest in expensive stormwater treatment technology. Unfortunately, there is little independently verified data for most stormwater-treatment technologies. Because of this, it is difficult to determine whether an investment in one technology over another will actually result in compliance with Ecology benchmarks.

Goal:

The goal of the Stormwater Treatment Technology Pilot Project is to evaluate the performance of various technologies to reduce the levels of metals (particularly lead, copper, and zinc) in stormwater discharges. Another part of the goal is to determine what

level of metals reduction is achievable using the known and available technologies included in the study.

Businesses may use the information we gain from this project in future AKART studies and engineering reports. The pilot project shall include the installation, testing, and performance evaluation of treatment or control technologies, at no less than three boatyards. Boatyards were selected because of the high discharge levels of copper, lead and zinc. Enhanced media filtration, electrocoagulation and ionic exchange are the three stormwater treatment technologies to be studied because of the potential to reduce metal discharges to 10 parts per billion.

Project timeline:

The expedited timeline is designed to test stormwater treatment technologies this winter, starting October 5, 2007.

The following tasks have been completed:

- Project manager and environmental engineers hired by June 27, 2007;
- Request(s) for proposals issued and associated process developed by July 11, 2007;
- Proposals from boatyards, consultants, and vendors received by August 8, 2007;
- Boatyards, consultants, and vendors selected by September 7, 2007;

These remaining tasks are on schedule:

- Treatment or other technology systems in place by October 5, 2007;
- Stormwater monitoring performed October 5 – December 31, 2007;
- Draft Technical Report prepared by January 31, 2008;
- Final Technical Report prepared by March 15, 2008.

Project Budget:

Expenses:

Project Manager	\$18,000
Environmental Engineers	20,000
Stormwater sample collection and analysis by independent third party	65,500
Installation of technologies by vendors (donated)	0
Travel, materials and mailing	900
Contingency	5,800
Total:	\$110,200

NMTA has read the proposed consent decree and will read the final decree when it is entered. NMTA agrees to spend any monies it receives under the consent decree for the

purposes specified therein. NMTA will report back to the Department of Justice when the project is completed. NMTA will not use any money it receives under the consent decree for lobbying purposes.

ATTACHMENT B

Project Title: Riparian Enhancement in the Green River Watershed

Applicant Organization: Mid Sound Fisheries Enhancement Group

Mission Statement: Mid Sound Fisheries Enhancement Group is a private 501(c)(3) non-profit organization that works with communities to maximize self-sustaining salmon populations. In King and Eastern Kitsap counties, we work cooperatively with private landowners, agencies, tribes and others to identify, design and implement projects that improve salmon habitat.

Contact/Title: Andrew Pavone, Project Manager

Mailing address: 7400 Sand Point Way NE Suite 202N Seattle WA 98115

Phone number: (206) 529-9467

Email address: andy@midsoundfisheries.org

Website address: www.midsoundfisheries.org

Amount requested: \$22,000

501(c)(3) Status: Yes

Project summary:

Mid Sound is requesting funds to enhance water quality and salmon habitat along the Green River and tributaries within the watershed. The projects that Mid Sound proposes are riparian enhancement projects and water quality monitoring along the Green River and its tributary Newaukum Creek. Mid Sound would use funding to pay for labor, plants, maintenance of planting sites, purchase of water quality testing kits and additional materials for fencing projects.

Riparian Enhancement projects along the Green River and tributaries are projects aimed to restore native vegetation, increase shade canopy layers, increase water quality and supply riverbanks with organic nutrient layers for macro invertebrates. In these projects Mid Sound will cooperate with King County and King Conservation District to work with private landowners gaining access to perform restoration projects.

Currently, Mid Sound is working with the county and two private landowners to remove invasive vegetation along the Green River and Newaukum Creek. Removal of invasive vegetation is supplemented by planting native vegetation in these areas to help shade out unwanted plant varieties and establish healthy plant communities along the banks. To implement these projects Mid Sound needs to acquire funding to purchase the plants and materials for the plantings. Typically volunteers are used to perform installations, but paid staff is used to maintain the projects for 3-5 years following the installations. This maintenance regiment is a critical component to a successful project and funds from this settlement would help support this effort.

Mid Sound is also involved with the King Conservation District in implementing various fencing and riparian buffer projects. These projects are aimed at increasing native vegetation along Newaukum Creek, the largest tributary to the Green River. Fencing projects are aimed at keeping livestock out of the water to improve water quality and

enhance salmon habitat. Upon installation of a fence Mid Sound will plant native vegetation on the water ward side of the fence to allow a buffer of native plants to mature along the river corridor. These projects can cost a great deal of money to install and maintain. Costs associated with these projects are fence materials, labor, plants, maintenance, and watering.

Mid Sound requests \$22,000 dollars to be used to support on-going projects along the Green River and Newaukum Creek and to support new projects that may arise in the following year. Additionally to these planting projects, Mid Sound would like to propose that a portion of this money be used to support a water quality monitoring study along Newaukum Creek. We would collect data from along the Upper Basin, Plateau and the Ravine areas of this sub-basin. A water quality study would help us better understand water quality levels along various reaches of the Newaukum Creek. Money from this settlement would help Mid Sound purchase water quality testing equipment and pay salary for performing field data collection.

Overall, Mid Sound would put the \$22,000 towards enhancing water quality and salmon habitat along the Green River and Newaukum Creek by removing non-native invasive plants; enhancing native flora in riparian areas; keeping livestock from entering into the water; outreach with in the community through landowner contact and volunteer efforts; and collecting baseline information on current water quality conditions from water quality monitoring efforts.

Budget for Riparian Plantings and Water Quality Testing

Salary	\$10,750.00
Water Quality Testing Kit	\$500.00
Plants	\$3,250.00
Fence Buffer Materials	\$2,000.00
Maintenance & Watering	\$5,000.00
Travel	\$500.00
Total	\$22,000.00

Mid Sound has read the proposed consent decree and will read the final decree when it is entered. Mid Sound agrees to spend any monies it receives under the consent decree for the purposes specified in the project summary. Mid Sound agrees to report back to the Department of Justice when the project is completed. Mid Sound will not use any money it receives under the consent decree for lobbying purposes.